

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50102
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO LUNA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-91-CR-003
- - - - -

September 4, 1996

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Antonio Luna appeals the district court's denial of his motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255). Even assuming that Luna's claims are not barred by the plea agreement's language preventing appeals or pursuit of post-conviction relief, Luna's arguments fail. The plea agreement nowhere contains any promises of a specific sentencing

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

range or of the quantity of drugs that would form the basis of the sentence. Luna nowhere argues that the plea agreement contained promises of more lenient sentencing. Luna supports his understanding that a lesser quantity of drugs would be used at sentencing only by reference to the language of a dismissed count of the indictment, which is not binding upon the court. United States v. Garcia, 902 F.2d 324, 326 (5th Cir. 1990).

Similarly, Luna supports his assertion that his counsel was ineffective by asserting only the conclusional allegation that counsel should have prevented the court from imposing a sentence based upon a greater quantity of drugs than the quantity set forth in the original indictment and that counsel should have objected or appealed when the greater quantity was used. Such conclusional arguments cannot form the basis of an ineffective assistance of counsel claim. See United States v. Smith, 915 F.2d 959, 963 (5th Cir. 1990).

Luna's motion to file a reply brief out of time is granted.

AFFIRMED.